

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

12:07 pm, Apr 19 2024

AT BALTIMORE
CLERK, U.S. DISTRICT COURT
DISTRICT OF MARYLAND
BY _____ Deputy

- - - - - x
 JUSTYNA JENSEN, :
 :
 Plaintiff, : Civil No. 24-000273-BAH
 v. :
 :
 MARYLAND CANNABIS :
 ADMINISTRATION et al., :
 :
 Defendants. : February 22, 2024
 :
 - - - - - x Baltimore, Maryland

MOTIONS HEARING

BEFORE: THE HONORABLE BRENDAN A. HURSON, Judge

APPEARANCES:

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I N D E XPage

Comments by Jeffrey Jensen, Esq.
Attorney for the Plaintiff

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Comments by Heather Nelson, Esq.
Attorney for the Defendants

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Rebuttal by Jeffrey Jensen, Esq.

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KEYNOTE: "----" indicates indiscernible in the transcript.
"*" indicates phonetic spelling in the transcript.

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1 P R O C E E D I N G S

2 (Whereupon, at 10:02 a.m., the hearing began.)

3 THE CLERK: -- of Maryland is now in session. The
4 Honorable Judge Brendan A. Hurson presiding.

5 THE COURT: Good morning, everybody. Please be
6 seated.

7 THE CLERK: The matter now pending before this court
8 is civil docket number BAH-24-CV-273. Justyna Jensen versus
9 Maryland Cannabis Administration, et al. The matter now comes
10 before the Court for the purpose of a temporary restraining
11 order.

12 Will Counsel for the Plaintiff please introduce
13 themselves for the record.

14 MR. JENSEN: Good morning, Your Honor. Jeffrey
15 Jensen on behalf of the Plaintiff Justyna Jensen.

16 THE COURT: Good morning.

17 MR. HONICK: Good morning, Your Honor. Allen Honick
18 on behalf of the Plaintiff as well. Good morning.

19 THE COURT: Good morning.

20 THE CLERK: And will Counsel for the Defendants
21 please introduce themselves for the record.

22 MS. NELSON: Good morning, Your Honor. Heather
23 Nelson for the State Defendants.

24 THE COURT: Good morning.

25 MR. TANSEY: Good morning, Your Honor. James Tansey

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1 on behalf of the Defendants.

2 THE COURT: All right. Well, good morning to you.
3 You can be seated.

4 All right. So let me tell you what I have looked at
5 here. I guess we are sort of at the preliminary junction
6 phase here given that everyone is here. So I have looked at
7 honestly, the complaint, the ECF-19, the motion itself,
8 correspondence at ECF-20, ECF-25, which is your response in
9 opposition, and EFC-26, which is your reply.

10 The memo is sort of buried in the motion. It was
11 like 19-6 or something like that. So I certainly read that
12 and appreciated it, and some of the attachments.

13 From the perspective of Ms. Jensen, have I missed
14 anything that I should have read?

15 MR. JENSEN: I do not believe so.

16 THE COURT: Okay. And, Defense, you think I missed
17 anything that I should have read that has been submitted or is
18 that everything on the docket that you are aware of?

19 MS. NELSON: That is everything, Your Honor.

20 THE COURT: Okay.

21 MR. JENSEN: Your Honor, I am sorry to interrupt.
22 When you said you read the reply, I assume that includes the
23 declaration that Justyna submitted?

24 THE COURT: Oh, absolutely. Yes. Everything
25 attached to it as well. Yes, definitely. Okay.

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1 So we have covered sort of the landscape, and it is
2 a very interesting issue. And stating the obvious, this has
3 not come up, at least some of this in this circuit, so I
4 appreciate everybody pointing me in the direction of other
5 cases. My goal here now is to -- the way I usually proceed is
6 to give you some time to just summarize your argument if you
7 want to, and then I will pepper you with some questions.

8 Same with you. I don't anticipate this taking more
9 than an hour or so, but obviously, Mr. Jensen, it is your
10 motion, and it is your bar to meet. So you can go first.

11 MR. JENSEN: Thank you, Your Honor. I would like to
12 just begin with the bottom line. I feel confident that this
13 is going to be appealed either way and on an expedited basis
14 to the Fourth Circuit. So I would ask the Court to consider
15 the balance of harms and put the injunction in place pending
16 the appeal. I would ask you consider that they have not even
17 set a date for the lottery. Their harm is going to be very
18 small by whatever delay waiting for the Fourth Circuit's
19 ruling.

20 Whereas, for the Plaintiff, once the licenses are
21 out there, I think it is unlikely the Court will recall them.
22 I have not seen a court do that yet under its equitable
23 powers. In light of that, I would ask the Court to consider
24 putting the injunction in place.

25 I would also point out that the Fourth Circuit, in a

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1 case cited by the Defendant, said that the Court is to
2 consider not only the harm of the Plaintiff before the Court
3 to interstate commerce, but the collective harm of the law on
4 the interstate commerce. That is Colon Health Centers of
5 America versus Hazel, 733 F.3d 535.

6 And so when you consider that this law excludes
7 people who went to college in 49 of the 50 states, I think it
8 is a large burden that outweighs the state's burden of a
9 temporary delay, if they are successful, until the licenses
10 are issued.

11 As far as whether the Dormant Commerce Clause
12 applies, there is a split authority on that as I acknowledge
13 in the papers. The only circuit to rule on it ruled that it
14 does apply. No circuit to date, that I am aware of, has done
15 anything to indicate it doesn't. The rulings from the other
16 circuits, the Second Circuit, Seventh Circuit, and that may be
17 it to date, would tend to indicate that they think it does
18 apply because they did not rule on that basis.

19 There is a fully briefed and submitted appeal to the
20 Ninth Circuit, and we are awaiting the ruling there. I did
21 submit to the Court the YouTube link that shows the oral
22 argument and the --

23 THE COURT: Yes. I took you up on watching that.
24 It seemed almost entirely devoted to abstention. You had
25 mentioned in your filing that they had -- and I want to make

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1 sure I quote you right because I actually just wrote this
2 down. You had mentioned that -- and you are talking about
3 that Peridot Tree v. Sacramento oral argument?

4 MR. JENSEN: Correct.

5 THE COURT: You had mentioned that the Ninth Circuit
6 also raised a question about the First Circuit case and
7 indicated the Ninth Circuit believes the First Circuit
8 majority was correct in concluding on the merits of the
9 Dormant Commerce Clause or concluding that the Dormant
10 Commerce Clause applies to cannabis.

11 Maybe I missed that. I heard one question to the
12 State or the City saying were they wrong in Northeast Patients
13 Group. Did I miss it?

14 MR. JENSEN: Well, Your Honor, if the Court watched
15 the video, I am sure you will make your own decision. My
16 interpretation of that was the judge said were they wrong, and
17 I think the State said, well, according to defense or
18 according --

19 THE COURT: Right. According to dissent.

20 MR. JENSEN: Right. And he said --

21 THE COURT: And he said, well ask the dissent.

22 MR. JENSEN: -- well ask the dissent when you go
23 out. Right. So, you know, I am not going to try to tell the
24 Court how to interpret the video that you watched with your
25 own eyes. So, you know, I --

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1 THE COURT: So that is the portion that you are --

2 MR. JENSEN: Correct.

3 THE COURT: -- referring to? Okay.

4 MR. JENSEN: So I would point out along the lines of
5 what Your Honor just raised, of the cases that are cited by
6 the Defense that four of those cases come from the Ninth
7 Circuit. Two of them are really duplicative. They are both
8 from the Western District of Washington.

9 Then there are the two that go into abstention. One
10 of the Peridot Tree that Your Honor watched. There was also
11 one in Los Angeles called Variscite. That just stayed the
12 case pending the resolution of the --

13 THE COURT: And is that the one that addressed the
14 prior conviction for marijuana in California as a requirement
15 for a license?

16 MR. JENSEN: It is.

17 THE COURT: Okay.

18 MR. JENSEN: And it is also -- that is notable one
19 other way. That is the first court that said there is not an
20 irreparable harm by being excluded from a lottery if there is
21 going to be a later lottery. That flies in the face of Finch
22 and Lowe, the precedent cases. Finch being out of Illinois,
23 Lowe being out of Detroit. The two precedent cases that
24 address that.

25 The Variscite Los Angeles case said that we never

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1 appealed it because it was already on appeal through
2 Variscite. And then the Defense in this case picked up on
3 that also in Washington. But I would -- I put this in the
4 brief. I just ask Your Honor to use your logic on that.

5 If this law said no African Americans are allowed in
6 the first lottery, there are going to be two. Nobody would
7 say there is no irreparable harm there because you can apply
8 in a second lottery. We all know that if you are --

9 THE COURT: And doesn't the law at issue here, or at
10 least some portion of it may be COMAR, it may be the law -- it
11 doesn't say this is the criteria we are going to use moving
12 forward?

13 MR. JENSEN: Well, Your Honor, you raise a good
14 point. The issue there is there is law that says a statute or
15 regulation is not right for challenge until it is final. So
16 the reason I didn't bring up whether the Plaintiff is going to
17 be allowed into that second lottery or not is it is not final.

18 I do point out that they have -- and I say this in
19 the brief. I mean, I think if their argument is going to
20 hinge on a second lottery, it should be their burden to show
21 they are going to qualify for it.

22 THE COURT: Plus, she could just say we are going to
23 have lotteries forever.

24 MR. JENSEN: Correct, Your Honor.

25 THE COURT: And just keep sort of punting down the

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1 road.

2 So with respect to Northeast Patients Group, it is
3 kind of the obvious question, but that is medical marijuana,
4 and this is not. And I will give you this much, as you read
5 that case, they do talk about this, I always mispronounce it,
6 the Rohrabacher-Farr Amendment, which actually had more
7 experience within a criminal context arguing various things
8 about marijuana.

9 But they do acknowledge that that is a significant
10 piece in the analysis. Essentially, that the federal
11 government has explicitly said they are not going to -- I
12 mean, this is paraphrasing of course, but they are not going
13 to prosecute anyone for being involved in the medical
14 marijuana trade. So that opinion seems to be focused on
15 medical marijuana. This obviously is not. Why would that
16 case govern the recreational rule?

17 MR. JENSEN: There were two cases out of Maine, Your
18 Honor. One had to do with adult use, and one had to do with
19 medical. The difference being that in the adult use -- I
20 mean, it is the same alternate analysis under the Dormant
21 Commerce Clause, but the reason they were two different, they
22 were two different systems.

23 Under the adult use, you got extra points in a
24 graded system if you were residents.

25 THE COURT: That is the NPG case or is --

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1 MR. JENSEN: I believe so, Your Honor.

2 THE COURT: Okay.

3 MR. JENSEN: I mean, the names get a little bit
4 muddy.

5 THE COURT: And these are mostly your cases. Were
6 you on those cases?

7 MR. JENSEN: I was not on those cases.

8 THE COURT: The reason I am peppering you is because
9 you know more about this than anyone it seems, and that is
10 great. That is why you are here. But that case, the NPG
11 case, was that decided on appeal? Was that consolidated with
12 the --

13 MR. JENSEN: So the --

14 THE COURT: Oh, go ahead.

15 MR. JENSEN: The NPG case was purely adult use.
16 Then that actually came to my memory before the medical case.
17 On the adult use, the state attorney general decided that was
18 not an offensive statute, so they abandoned it. And they
19 voluntarily abandoned the law. And I have cited that I
20 believe in the motion, and if not, in the rebuttal.

21 THE COURT: Yes. And I agree there are numerous
22 instances, including Northeast Patients Group, but the state
23 basically said, yes. If we apply the Dormant Commerce Clause,
24 we lose. And quite frankly, I am not going to opine on the
25 entire nature of these state marijuana schemes, but you are

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1 focusing on the sale of licenses. There are other aspects,
2 the growing. Other areas where if you did apply the Dormant
3 Commerce Clause, there may be problems. In effect, these all
4 seem to be little, isolated intrastate markets that if
5 Congress flipped a switch and legalized marijuana, you would
6 be a very busy person, I would think.

7 And I will also give you that I am not in any way
8 thinking Congress is going to opine on that. I mean, it is
9 not my job to decide what they are going to do or to think
10 about it, but it seems to me that that discussion, that
11 legalization at the federal level is imminent has been going
12 on forever. And if anything, the only discussion is about
13 reclassifying marijuana as a different, you know, tiered drug.

14 So putting that aside, I think the major issue I
15 have is just that question is legality as it pertains to the
16 adult recreational market. And Northeast Patients Group
17 dissent, Judge Gelpi, I think it is, seems to be in those
18 courts that have held that the illegality makes it sort of
19 exempt from the Dormant Commerce Clause, and that is what they
20 are clinging to. And that seems to be pretty persuasive. So
21 I guess my question is, after all that, you know, why would
22 Northeast Patients Group apply?

23 MR. JENSEN: Sure, Your Honor. I would like to
24 mention two things in response to that. One is I will circle
25 back to what I said earlier that I believe this is going to be

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1 appealed whichever way you rule --

2 THE COURT: Sure.

3 MR. JENSEN: -- it and expedited. So I would ask
4 the Court to consider that even if the Court views it as an
5 open question, to balance the harms and consider putting the
6 injunction in place until it is resolved.

7 I would also point out that it is true that they
8 relied on in the medical case out of Maine out of the First
9 Circuit, that they relied on the Rohrabacher-Farr and also the
10 Cole memo one.

11 I would point out, this is in the briefing I
12 believe, when Congress interviewed the current attorney
13 general before confirming him, they raised this directly with
14 him. How are you going to deal with the fact that cannabis is
15 federally illegal, but it is has been legalized in many
16 states. Paraphrasing his answer was, you know, I think we
17 have better things to do than worry about state-legal
18 marijuana, and I don't intend to enforce.

19 So Congress confirmed him after that answer. So I
20 think that evidence is an intent by Congress to leave the
21 state programs alone notwithstanding the federal legality just
22 like they did with the medical programs.

23 THE COURT: So there is no -- you know, throughout
24 the last 20 years, there have been formalized attorney general
25 memos on marijuana prosecutions, typically with respect to

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1 medical marijuana, and you are not pointing to any specific
2 correspondence or policy position by the Department of Justice
3 on that?

4 MR. JENSEN: Your Honor, the Cole memo was put out
5 for medical and that was repealed, I believe, maybe in 2019.
6 I can't say I remember exactly when. But the Cole memo is not
7 in place for medical either. So there is no memo for adult
8 use and there is no memo for medical, and yet, the Court is
9 relying on the intent of the Attorney General to not prosecute
10 in their opinions.

11 THE COURT: But what if there was -- I was trying to
12 come up with an example, and maybe Judge Gelpi was hitting on
13 this a little bit. What if the State of Maryland passed a law
14 that said out of state fentanyl dealers get double punishment?
15 It is normally a 10-year max, it goes up to 20. If it is
16 normally a 20-year, it goes up to 40 if you are from out of
17 state. Under your rationale, couldn't the fentanyl dealer
18 challenge that on Dormant Commerce Clause grounds?

19 MR. JENSEN: Your Honor, that may be -- I have to
20 think this through. That may get into extraterritoriality.
21 Unless you are talking about solely a crime committed within
22 the jurisdiction based on somebody traveling. You know, I
23 have no criminal law background. So I am hesitant to opine on
24 that, but it is possible.

25 THE COURT: Yes. It just seems to -- obviously,

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1 that example -- and I am not trying to equate the two.

2 MR. JENSEN: Right.

3 THE COURT: Obviously, marijuana is being treated
4 different than the "harder drugs". But it is an issue that it
5 remains illegal. And certainly, there are still prosecutions
6 at the federal level for growing it, selling it. They may be
7 rare, but they are still happening, at least within the last
8 five years. And I can attest to that personally having
9 defended a few myself.

10 MR. JENSEN: Your Honor, when you say that there
11 have been prosecutions are you talking about state-legal
12 licensed?

13 THE COURT: I am talking about criminal prosecutions
14 for marijuana at the federal level for its production, for its
15 importation. It is still criminalized. And so I completely
16 agree with you that it is different than the other drugs, and
17 maybe you didn't even say that, but I think it is implied.
18 But this issue of illegality is one that is hard to get
19 around.

20 MR. JENSEN: Your Honor, I don't profess to know
21 every prosecution --

22 THE COURT: Sure.

23 MR. JENSEN: -- in the country or, you know, I focus
24 mostly, of course, on California. But I am not aware of any
25 prosecution within the last several years of a state-licensed

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1 person complying. And I think there is a distinction. You
2 are correct that marijuana is marijuana, but when the Attorney
3 General was asked how he would deal with the fact that
4 marijuana is federally illegal but state legal, his response,
5 and again, I am paraphrasing, but it is in there, was
6 something to the effect of we have better things to do with
7 our time than worry about state-legal marijuana.

8 So I think his statement does not apply if somebody
9 is doing something illegal, whether that is crossing state
10 lines or growing without a license. And I think we see that
11 in all sorts of things. You know, you can --

12 THE COURT: Yes.

13 MR. JENSEN: Alcohol is -- legally, you can
14 transport it across state lines. You can sell. You can do a
15 lot of things, but you can't do that without a license, and
16 you can't do it to people under 21. And you would be
17 prosecuted for that even though the product is legal and
18 licensed and subject to the Dormant Commerce laws.

19 THE COURT: Fair enough. So with respect to the
20 actual -- now, let's get past the legality part and say we are
21 doing the actual analysis. It seems well-accepted, and
22 everybody seems to be arguing this sort of two-tiered
23 analysis. And you are saying that, and I am just focusing on
24 that one --

25 MR. JENSEN: The third part.

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1 THE COURT: The third part. I keep calling it a
2 prong and I guess that is fair, but it does not on its face,
3 like some of the other challenged statutes, require Maryland
4 residency at the time of the application or a significant
5 Maryland presence or some of the key words that have caused
6 problems in the past. I don't profess to know anything about
7 writing the law, but I suspect State of Maryland took its time
8 and probably reviewed some of those decisions.

9 But regardless, you are saying in providing in-state
10 and out-of-state percentages for these six schools that
11 qualify. I was going to list them, but we all know what they
12 are. So I understand that in 2024 or 2023, those schools had
13 a large percentage of Maryland residents enrolling. But I
14 feel like I have to do a lot of guessing and extrapolating.
15 And it may ultimately prove true to get to the point where
16 under tier one, we find that this is a -- I find that it is a
17 substantial impact in favor of Maryland residents.

18 I am trying to figure out why just one year of data
19 is enough to conclude that this law fails under tier one. I
20 guess that is the short question.

21 MR. JENSEN: Your Honor, I don't think you have to
22 find a significant impact. I think you have to find that it
23 burdens out-of-state more than in-state. The Variscite case
24 in Los Angeles that was not directly appealed, one of the
25 things that the court found in there, the City listed

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1 disproportionately impacted areas within Los Angeles. And
2 they said, and these are the criteria if you can find them
3 from another city or another state.

4 And I haven't looked at that opinion in quite a
5 while. My recollection of it is the court said that although
6 it was at a preliminary junction standard, not the summary
7 judgment, she found it was a likelihood of success violated
8 the Dormant Commerce Clause because the City had provided the
9 zip codes and said this is how you find out if you are in a
10 ----.

11 THE COURT: And then out-of-staters had to jump
12 through a bunch of hoops, if I recall correctly.

13 MR. JENSEN: Yes. So, Your Honor --

14 THE COURT: That isn't the case here though. This
15 is --

16 MR. JENSEN: No. But that is not the point I am
17 citing. I am citing it for the fact that you don't have to
18 have a complete definitive bar that nobody from outside of the
19 jurisdictional state can enter. Even if it is possible for
20 other people to get in, if you put in a higher hurdle, it
21 burdens out-of-state commerce. Then that is --

22 THE COURT: So I agree with you on that, but that is
23 what my point is. How does the data that you have given me
24 show that higher burden?

25 MR. JENSEN: I don't think I need to provide that

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1 data, Your Honor. I provided it as back up, but I think it is
2 sufficient to say that the statute says has to be a college --
3 well, I guess they say institute of higher education, but we
4 all know what it means, in the state.

5 And the Dormant Commerce Clause law says that it is
6 a almost, I forgot the exact words, but it is an almost
7 automatic disqualification if it is --

8 THE COURT: If it per se. But wouldn't that mean it
9 would say residents of Maryland? It doesn't speak to
10 residency at all. And this is a whole other issue that I am
11 certainly struggling with, whether the requirement to attend a
12 Maryland school equals a requirement to be a Maryland resident
13 because obviously, there are out-of-state residents who are
14 attending Maryland schools. And whether that even is required
15 under the analysis, I don't know. I have to dig a little
16 deeper on that.

17 But as I read this law, it does not, on its face,
18 appear to me to require Maryland residency. And if anything,
19 it is so backward looking, that as we look at the real issue,
20 which is are you putting a thumb on the scale in favor of
21 Maryland commerce in the present time, it doesn't appear to do
22 that.

23 MR. JENSEN: Your Honor, I disagree with that. I
24 think there are far more people who live in Maryland who are
25 likely to attend a college in their --

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1 THE COURT: But that is what I am talking about.
2 That is an assumption. And it may be a good one, but I don't
3 have that in front of me. So if I am supposed to enjoin a
4 law, don't I have to make that assumption?

5 MR. JENSEN: I don't think it is a stretch to think
6 that if you list off six schools that are in a state, that it
7 is more likely the people in the state went to those schools
8 than out of state. I don't know anybody who went to any of
9 those schools.

10 THE COURT: Well, you are from California, and I
11 will agree they are more regional. But Morgan State by the
12 date that you submitted, in 2024, I think more than half of
13 the students enrolled there are from out-of-state. And then
14 we go back to the founding because as far as I can read this
15 law, and there is a little bit of debate to me as to whether
16 the Pell Grant thing means now 40 percent. Because obviously,
17 Pell Grants didn't come into existence until I think the early
18 70s, but these universities were in existence far beyond that.

19 So assuming it means 40 percent or more today, it
20 certainly doesn't mean that you had to attend the school
21 during a period where Pell Grants were given. So quite
22 frankly, we go back to the founding of all these six
23 institutions, and I have got to believe there are a
24 significant number of graduates who are living out-of-state.
25 You want me to say there is a significant number of graduates

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1 living in-state, which isn't crazy, but I just don't have that
2 in front of me.

3 MR. JENSEN: Your Honor, this is probably not really
4 the point on how to do it for the Pell Grant, but I would
5 think if you go back before Pell Grants were allowed, that it
6 is not true that 40 percent of the students were eligible for
7 Pell Grants. So I would think at the very minimum, the time
8 limit starts when Pell Grants were created.

9 But I understand your point, but does that mean you
10 go today, or can you go back 10 years, or can you go back all
11 the way to the 70s? I understand that point.

12 THE COURT: Yes. I think the State had said, you
13 know, someone who has been in Nebraska for 30 years but
14 attended Coppin State for two years is eligible.

15 MR. JENSEN: I don't know where those schools are,
16 how close they are to the border, but my guess is that the
17 vast majority, if not all of the students, probably lived in
18 Maryland at the time they attended those schools.

19 THE COURT: Well, they would have -- well, COVID, by
20 the way, with remote attendance, I have no idea how that
21 impacts the analysis, but let's take that out.

22 I am not going to say you are nuts for thinking that
23 a large number of Coppin State students are from Maryland, and
24 a large number of Coppin State graduates were from Maryland at
25 the time they attended or have remained in Maryland. Buoy

1 State, on the other hand, a little bit closer to Washington,
2 D.C., accessible by rail. Morgan State, your own data shows a
3 significant number of students from out-of-state. UMES, I
4 don't know as much about their geographic makeup. But point
5 is, this doesn't strike me as the same thing as saying you
6 need a significant New York presence, or you need a driver's
7 license from Maine, or you need a bank account in Maine.

8 MR. JENSEN: Your Honor, the significant New York
9 presence, as I think you elude to it, again, can be a bank
10 account. You can live in California and open up a bank
11 account in New York and satisfy that. I think that is a much
12 lower burden than enrolling in a college in Maryland. Even if
13 it is in -- you mention one is near D.C. and accessible by
14 rail.

15 But, you know, again, I would point out, I think
16 there were six colleges, and one of them had an in-state
17 population I believe roughly 42 percent.

18 THE COURT: Yes.

19 MR. JENSEN: But others had -- I think one went up
20 to 91 percent.

21 THE COURT: Of course, that is now. And none of
22 these people would be eligible now because they need two
23 years, at least, under that section. But I mean, it is what
24 you have got. It is what you can bring.

25 MR. JENSEN: Right. It is very difficult to find

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1 the Pell Grant information.

2 THE COURT: Yes.

3 MR. JENSEN: Even when you contact the schools, the
4 schools themselves don't always have that.

5 THE COURT: Yes. It is interesting because that
6 issue of where people are living now who attended, I suppose
7 the State could have provided the data on how many people
8 actually applied under that, the challenged prong. That would
9 be helpful information, but it doesn't appear that we have it.

10 Let me ask you one last thing and then I will let
11 you sit. I really appreciate your answers and your time. The
12 delay. This question of Laches that the State raises. I have
13 read the declaration, and it appears taking it as true, which
14 I will of course, that Plaintiff did not learn about this
15 until September. Why not file the suit the next day?

16 MR. JENSEN: Your Honor, just to close out our last
17 line of discussion. I just, again, and I think Your Honor
18 gets it, but it does not have to be a complete bar. It just
19 has to burden out-of-state more than in-state.

20 THE COURT: No. I totally agree with you on that.
21 And going back, I completely agree. I am struggling with the
22 number of assumptions I have to make to even find that burden.

23 And the other thing I am struggling with is if we
24 move to tier two, let's say I don't find that burden at tier
25 one and we end up at tier two, and we start doing the

1 balancing test. One of the other things I was really more
2 interested in asking the State, but I will ask you too, how do
3 you even do the tier two balancing without seeing the law in
4 effect? I have never seen a case where they have preemptively
5 done tier two analysis.

6 MR. JENSEN: Your Honor, the State's stated benefit
7 of this program is to provide benefits to people who -- I am
8 paraphrasing, and it is written there, but it is to the effect
9 of to provide opportunities to students who qualify for
10 government benefits. None of that is limited to Maryland.
11 They could excise a couple words from this and just say you
12 have to go to college where 40 percent receive Pell Grants,
13 and they could get that same benefit.

14 THE COURT: Which you raise a great point, and I
15 will get to that. Finish your thought and then I will come
16 back.

17 MR. JENSEN: No. But they didn't do that. That
18 included in the State, which the only reason for that would be
19 economic protection is then to benefit the State's voters.

20 THE COURT: Well, as you mention in the State part,
21 I can't rewrite the law, as the State pointed out. And you
22 have taken me away from Laches, which might be a good move.
23 Maybe not intentional, but well-done. We will come back.

24 I can't rewrite the law. So if all I can do here is
25 strike out the entire prong three, and your client still can't

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1 a license.

2 MR. JENSEN: No. I don't think that you can strike
3 the entire prong three, Your Honor. I think you have to
4 strike all of it. I don't think there is -- even if there is
5 a saving clause, I having never seen a saving's clause that
6 applies to a subsection. So I think the Court's only option
7 would be to enjoin the unconstitutional law. The Legislation
8 can then rewrite it and put out a constitutional one.

9 THE COURT: But then that kind of gets into your
10 standing because some of the cases that I have seen where they
11 had no prong withstanding, even in situations where the
12 Plaintiff may not have otherwise qualified, was that sort of
13 conjunctive requirement. You need to be here and here and
14 here, and as a result, someone who couldn't get a license was
15 able to have the entire law wiped out or at least make that
16 effort.

17 Here, the State has carefully laid out three
18 different areas. So I am supposed to proceed as narrowly as
19 possible and proceed in a manner that does not overturn the
20 will of the voters. That would seem to just be to strike
21 prong three.

22 MR. JENSEN: Your Honor, I don't know the First
23 Circuit law on this point, but my understanding is that would
24 be essentially a line item, you know, to go in and strike a
25 portion. It is essentially the same as striking out in the

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1 state, right?

2 THE COURT: But you don't even have standing to
3 challenge the first two. So I couldn't -- I don't think that
4 you are trying to have --

5 MR. JENSEN: I don't --

6 THE COURT: -- you are even professing standing on
7 the first two points.

8 MR. JENSEN: I am professing standing on a joined in
9 the licensing. If there is a way to get into the licensing
10 program, my client has not heard of that, then I have standing
11 to challenge the entire program.

12 It was never in the papers to ask the Court to
13 strike just part three and let the lottery go forward with the
14 first two options. I am not aware of any jurisdiction where
15 that was done. I mean, the way they were enjoined in law, the
16 entire program was enjoined in Detroit.

17 THE COURT: Again, I thought that was a sort of
18 conjunctive law that required all three. It is going to be
19 hard to show up in a transcript my noises, but point being,
20 you have got to do A, you have got to do B, you have got to do
21 C. This is different, and maybe for a good reason, but I see
22 your point on that.

23 Last, let's go back to Laches.

24 MR. JENSEN: Sure.

25 THE COURT: And this may have opened the door even

1 wider than that if the challenge is to the entire law. Your
2 client finds out in September that the law is here. File a
3 lawsuit then. I mean, your whole standing requirement sort of
4 hinges upon the fact that you are ineligible from the start.

5 If I agree with you that making you go through the
6 motions of seeking the certification and then applying because
7 obviously -- I am saying obviously. It appears from the
8 record that your client did not apply, which I am with you on
9 that. I think that would be futile, and your client appears
10 to have satisfied the requirements that they be sort of ready
11 and able. They seem to have satisfied those requirements back
12 in September.

13 MR. JENSEN: Your Honor, I disagree with the Court
14 when you said that we didn't apply, we don't have to because
15 it would be futile. This is a two-part application system.
16 First, you have applied what they call SEE delegations --

17 THE COURT: Right.

18 MR. JENSEN: -- social equity. And then, and only
19 then, if you pass it will they give you the link. I believe
20 it was on a computer, some kind of code to apply. So we were
21 never permitted to put in a registration for the lottery.

22 THE COURT: Right. I understand that. But my point
23 is to say that you knew that the first certification part was
24 going to result in a rejection back in September.

25 MR. JENSEN: Your Honor, the State has argued in its

1 briefs that we don't have standing because we didn't put in an
2 application. If we have moved before --

3 THE COURT: I am not talking about standing. I am a
4 hundred percent understanding of your point there, and
5 actually am sort of agreeing with you. My question is Laches.

6 MR. JENSEN: Right. My answer though goes to Laches
7 because if we had applied in September, the State would have
8 said we have no standing because we didn't apply, we were not
9 rejected, and so on. They made that argument now, and we did
10 apply, and we were rejected.

11 THE COURT: So you apply for the certification, and
12 when do you get the rejection for the certification?

13 MR. JENSEN: On December 13, I got a letter from
14 Defendants that we were rejected. Two weeks later, I began
15 settlement negotiations. Those ended on January -- I am
16 sorry. Those ended on January -- I have 26th, but that can't
17 be right because I think we filed the complaint on 26th. But
18 it was somewhere from December 27 until somewhere in probably
19 mid-January. And then I think it was 10 days after, they --

20 THE COURT: But the settlement negotiation's part,
21 do you have a case that says that that tact can substitute for
22 the actual filing of a lawsuit? That is a choice you made to
23 contact the State, assume to potentially see if they will see
24 around their licensing scheme or something like that. I mean,
25 that is the only settlement I could think of that would be

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1 beneficial to your client.

2 MR. JENSEN: Well, Your Honor, my typical practice
3 is in civil litigation, but I have never had a court punish a
4 litigant for attempting settlement prior to bringing a
5 lawsuit.

6 THE COURT: That wouldn't be punishment so much as
7 saying that there is no reason settlement can't go on at the
8 same time that a complaint is filed. Because at least at that
9 point, the State is on notice that this is going to get
10 reviewed, and they can stop spending some of the resources
11 that they are spending. You know, it is not punishment. It
12 is just the truth that as the State continues to plow forward
13 with this and you have not filed suit or sought the
14 injunction, the balances seem to be tipping more towards them
15 than towards you.

16 MR. JENSEN: Well, Your Honor, even if that is true,
17 we were rejected on December 13th, and we filed the case on
18 January 26th, which I think is short considering the
19 complexity of the issues going on.

20 THE COURT: Yes. I guess I just can't get over the
21 fact that I think that this case could have been filed in
22 September.

23 MR. JENSEN: Perhaps, Your Honor, but I also point
24 out that they had not finished registration for the lottery at
25 the time we filed it, and they certainly haven't held the

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1 lottery.

2 THE COURT: Well, that is true, as far as I know.

3 All right. Thanks. I may have some --

4 MR. JENSEN: And --

5 THE COURT: Go ahead.

6 MR. JENSEN: I also point out, in their harms, I
7 mean their harm is \$650,000, which for a State to be able to
8 buy a constitution violation for \$650,000, seems very cheap.
9 And as far as that 650,000 they spent is to review
10 applications, they can reuse two of the three sections. You
11 know, if they put it back out and they strike the third
12 category, they can use it and go forward right now.

13 If they revise the law to strike the part that says
14 --

15 THE COURT: I thought you said they can't go forward
16 with it?

17 MR. JENSEN: No. I said if you enjoin it and they
18 revise the law to get rid of the third section, then they can
19 go forward with the lottery.

20 THE COURT: Then how is that different than me just
21 saying, okay. The third section is out. Go ahead on one and
22 two.

23 MR. JENSEN: Because one is a legislative act, and
24 one is a judicial act.

25 THE COURT: I know. We are in court. I think you

1 are asking for a judicial act.

2 MR. JENSEN: I am not asking the Court to rewrite
3 and strike the third prong. What I am saying is if you adjoin
4 it, it goes back to the legislature. They can pass a
5 constitutional statute. There is no reason they can't do
6 that.

7 THE COURT: All right. So you are saying I enjoin
8 the whole thing, one, two, and three. It goes back to the
9 Maryland State Legislature, they come back with just one and
10 two. They use the old applicant pool. Of course, that
11 assumes that there are applicants that didn't, like your
12 client, attempt to or qualify under number three. But okay.

13 MR. JENSEN: Your Honor, that is not an odd result.
14 I mean, that is what happened in Missouri. That is what
15 happened in Illinois. And that just is in the context of
16 cannabis. I am sure there are plenty of examples where a
17 state put out an unconstitutional law, was challenged, they
18 revised the law to fit the purpose the state wanted, but
19 constitution it.

20 THE COURT: No. It is a fair argument. I
21 appreciate it.

22 All right. State, you are up. I will give you the
23 same sort of time to talk about what you want to talk about,
24 and then maybe I will cut you off if that is okay.

25 MS. NELSON: Thank you, Your Honor. There are a

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1 number of points Counsel has raised that I appreciate and look
2 forward to the opportunity to respond to. But here, Maryland
3 has created a statute scheme that is materially different from
4 those that have been challenged in other states. Your Honor
5 identified these three criteria by which an individual can
6 qualify as a social equity applicant, or in the alternative,
7 there are three options by which one can qualify.

8 None is mandatory. None is a mandatory bar to
9 entering the application process. And so while we have seen
10 similar cases in other jurisdictions, the statutes here are
11 materially different and the facts here are materially
12 different.

13 I would respectfully note, I understand where Your
14 Honor may be on redressability and you mentioned injury, but I
15 have to respectfully note, they have not established Plaintiff
16 was ready and able to apply for this application. We have in
17 the record evidence that the application -- a complete
18 application submission required one to demonstrate, among
19 other things, a complete application, diversity plan,
20 operational plan, business plan, all documents that were
21 published to the websites and available for anyone to access
22 and work on.

23 And an applicant was required to submit a
24 certificate of good standing from the State Department of
25 Assessments and Taxations indicating that the business entity

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1 was ready and able to conduct business in the state. Here, we
2 have Plaintiff suing in her individual capacity. That is a
3 material difference from the other cases that we have seen
4 Counsel participate in across the state. So we have no
5 evidence -- and obtaining a certificate of good standing for a
6 new business entity is not something that happens
7 instantaneously. There is a process and time ----.

8 THE COURT: But isn't she just asking for the right
9 to apply, and by engaging in the process of seeking that
10 status, show that she wanted to apply? And so she is not
11 asking for the license. She is asking for the right to apply.
12 Isn't there a difference there?

13 MS. NELSON: I understand that she is asking for the
14 right to become a verified social equity applicant by
15 demonstrating attendance at an out-of-state university. That
16 was a necessary element of a complete application. But no
17 other element of a complete application has been demonstrated
18 or pled here.

19 THE COURT: But how would they do that though? That
20 is the part I don't -- they would have to -- because if that
21 is something you submit with your application, they don't have
22 the code to even -- I am not acting like I know how it works,
23 but he was saying there is a code you get. They can't even
24 put that in. I assume it is online, and you get an error
25 message, and that is the end of it.

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1 MS. NELSON: So the application portal required one
2 to create an account through Maryland One Stop. Applicants,
3 especially towards the end of the application or the end of
4 the application period, were encouraged to create the portal,
5 do as much of the application as you possibly can if you are
6 still waiting your final verification of social equity
7 applicant status.

8 The portal was not only accessible after you
9 received your social equity applicant verification code. You
10 could create a One Stop account beforehand. And even if you
11 couldn't, the application templates were published to the
12 Cannabis Administration website and the website for the
13 Cannabis Administration's Office of Social Equity. So those
14 were publicly available to anyone to download, to look at, to
15 study, to work on, to demonstrate that they had ready to go,
16 that they would be ready and able to apply.

17 So Plaintiff's pleads that this is the only
18 requirement to the application that is not met, but that is
19 not --

20 THE COURT: I mean, I am sympathetic though because
21 obviously -- let me put it in my own terms. I am applying to
22 college. I am getting into Harvard. Just personal. Okay. I
23 know I am not. So I need to go up there, find an apartment,
24 buy all the clothes, be all ready just to express my interest,
25 and then I know I am not getting in. Maybe it is not a good

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1 example because it is too subjective, but point being let's
2 say that had a residency requirement, that was the only
3 reason. Why make me go through all that?

4 MS. NELSON: Your Honor, I --

5 THE COURT: I didn't apply to Harvard. Maybe it
6 would have happened, but let's just say probably not.

7 MS. NELSON: Whereas, here, Plaintiff has pled this
8 is the only thing keeping them out of the lottery.

9 THE COURT: Okay.

10 MS. NELSON: They haven't established that.

11 THE COURT: Okay. I see your point.

12 MS. NELSON: There is a bald assertion in the
13 complaint and in the motion that this is the only thing
14 keeping them out of the lottery. And, in fact, there were
15 communications with the state's vendors, CSI, in which during
16 the verification process, Plaintiff's Counsel asked CSI to
17 confirm is this the only thing keeping us out of the
18 application process. And CSI responded that they did not have
19 sufficient information to verify ----.

20 THE COURT: But it is definitely a thing.

21 MS. NELSON: It is a thing --

22 THE COURT: Okay.

23 MS. NELSON: -- for sure. It is inconsistent with
24 the pleading.

25 THE COURT: Okay.

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1 MS. NELSON: It is not supported by any evidence
2 that we understand would be available and has been available
3 in other cases Counsel has participated.

4 THE COURT: Okay.

5 MS. NELSON: For example --

6 THE COURT: But does anybody else have this type of
7 system where you have to go to an outside vendor for approval
8 first?

9 MS. NELSON: That I don't know, Your Honor. When my
10 client was designing the process, they did attempt to make the
11 social equity applicant verification process something that
12 they could assist people with before the application period
13 opened. They weren't sure how many applicants, how many
14 individuals would be interested in pursuing that verification.
15 And that was a free service available to anyone interested in
16 applying. So that is the thought behind that structure. And
17 then the application period opened shortly after that social
18 equity applicant verification portal closed.

19 THE COURT: So with this two tiered analysis, they
20 are saying this is facial discriminatory because of this
21 explicit reference to the need for the state university
22 attendance. You say no obviously, and you cite to some of the
23 stuff that I was asking before. Specifically, that it --
24 well, why don't I let you say why it is not instead of me
25 telling you why you told me earlier. Respond to that, and

1 then we can maybe continue that conversation.

2 MS. NELSON: Thank you. This is a materially
3 different provision from that which has been an issue in other
4 states. Here, there is no residency requirement. There is no
5 requirement that only Maryland residents can apply to these
6 schools. There is no requirement that alums of these schools
7 are required to live in the State of Maryland. And this
8 criteria did not exclude participation from out-of-state
9 individuals.

10 Plaintiff offers a very limited snapshot of
11 evidence. There is additional data available demonstrating
12 out-of-state student enrollment. We don't have data available
13 on out-of-state alumni participation, but we know that this
14 criteria did not bar out-of-state individuals from qualifying
15 under this criteria. Again, which was an offered alternative
16 to the other two criteria that were available to individuals
17 from across the country to seek verification with data from
18 their respective states.

19 THE COURT: So you obviously, or your client, has
20 the data on how many people applied checking the prong that is
21 at issue here; how many people are using the two-year Pell
22 Grant school.

23 MS. NELSON: I do have some data on that, Your
24 Honor. Here, the Cannabis Commission received approximately
25 1,700 applications total. Those applications represented

1 approximately 1,900 verified social equity applicants. Some
2 social equity applicants participated at a lower ownership
3 threshold and joined together for an application.

4 Of those verified social equity applicants,
5 approximately 12 percent were verified under the Pell Grant
6 criteria alone. And so the other two criteria were far more
7 significant in enabling access to the application process and
8 the licensing lottery.

9 THE COURT: Interesting. Okay. So when we talk
10 about the -- if we get to tier two, I had asked the question
11 before, and I really intended to ask you. With respect to
12 tier two analysis, how do you do that without seeing who
13 actually gets the licenses? A lot of this is guessing and I
14 get that, and obviously, when you are not applying during a
15 commerce clause analysis, you are looking forward to the
16 effects.

17 But we have already, at that point, jumped past, and
18 I, at that point, would have found it is not facially or in
19 practical effect discriminatory. Do we even talk about tier
20 two?

21 MS. NELSON: It is a challenge to attempt to apply
22 the existing case law to the cannabis industry specifically
23 because there will be no interstate sales of goods. There
24 have been state criminal prosecutions against cannabis
25 operators who have attempted to ship cannabis goods across

1 state lines in between two different regulated markets.

2 And we don't have data on the level of interest in
3 pursuing a cannabis business opportunity in Maryland from
4 individuals in other states. There is simply -- it is one
5 more point upon which Plaintiff asks this Court to make an
6 assumption about the level of interest in participating in
7 Maryland's cannabis industry.

8 It is reasonable to conclude that the majority of
9 interest in pursuing a cannabis business opportunity would
10 come from locals who are interested in establishing and
11 operating a business where they are, so that they can tend to
12 that business. And that is not to exclude out-of-state
13 individuals in any way, but where, especially as here, the
14 General Assembly had an interest in encouraging social equity
15 applicants into the industry and creating opportunities for
16 small business owners who otherwise did not have significant
17 cannabis industry experience, it is reasonable to conclude
18 that the majority of interest would come from local
19 individuals.

20 THE COURT: So you probably just answered this, but
21 let's say that we are at tier one, and I say this does appear
22 to have the practical effect of discriminating against out-of-
23 staters. Do you have a compelling interest that you think
24 would make that still constitutionally permissible?

25 MS. NELSON: We feel strongly that this does not

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1 discriminate on its face.

2 THE COURT: Of course.

3 MS. NELSON: And the State --

4 THE COURT: But a lot of states have come in and
5 said, hey, we totally acknowledge this violates. And I see
6 why you are not because this is obviously -- I don't mean to
7 demean the other states, but this is far more thoughtful, some
8 may say calculated, but whatever. It is different. But let's
9 just get past that and say I do find that it is in practical
10 effect or on its face. What is the compelling interest that
11 makes it survive?

12 MS. NELSON: The State does have an interest in
13 supporting the health of its universities who provide economic
14 and educational opportunities to those who come from limited
15 means. So we have seen that in other lines of litigation in
16 the state where we have state universities that make it part
17 of their mission to provide educational opportunities to those
18 who come from more challenging circumstances.

19 And here, the State has adopted a criteria that
20 recognizes those universities, those who have attended those
21 universities and seeks to create additional economic
22 opportunities for those who are serving individuals who
23 qualify for government benefits.

24 THE COURT: Of course, the response would be totally
25 agree with you, but the state part is completely unnecessary

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1 to achieve that goal because there are other schools on the
2 list submitted that are out of state that educate the same
3 population or aim to do so, and you could meet that goal in a
4 way that doesn't put a thumb on the scale in favor of Maryland
5 schools.

6 MS. NELSON: I understand their argument, Your
7 Honor, and I think where the State has looked to create
8 additional opportunities for its public institutions that it
9 funds and supports and looks to educate people from
10 everywhere. That is a legitimate public interest, and there
11 is no requirement that they take the most narrowly tailored
12 approach here.

13 I think what we have seen is Counsel, I understood,
14 and this was my interpretation, nearly concedes that we are
15 not under the facially discriminatory element here. That we
16 are under the Pike analysis. That where --

17 THE COURT: I don't think so. I kind of read it the
18 opposite. That they are saying because of the inclusion of
19 the State, that that is explicitly favoring state schools, but
20 in practical effect, even if we don't agree with that, in
21 practical effect, given the data that was presented, you are
22 roping in almost exclusively Maryland residents. And in
23 essence, you are just getting to say, hey, we want graduates
24 to be -- we want Maryland residents who went to these six
25 schools. That is what you are basically saying.

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1 MS. NELSON: We want to make additional
2 opportunities for those who attended those schools, and they
3 can be from anywhere. They are from anywhere right now.

4 THE COURT: But you would agree that practical
5 effect, that is a hundred percent Maryland residents. That is
6 not the numbers we are dealing with, but let's say it is close
7 to that. Wouldn't that be the impractical effect? Putting a
8 thumb on the scale in favor of Marylanders.

9 MS. NELSON: I understand Your Honor's point, but I
10 have to note that we don't have information available on the
11 level of interest from those who are out of state. Here, we
12 have one Plaintiff suing in her individual capacity, and we
13 don't know how many others, if any, would have sought
14 verification under a different criteria. We --

15 THE COURT: It is interesting because I -- a lot of
16 the Dormant Commerce Clause, if not all of it, analysis deals
17 with present benefits. Essentially saying, hey, you can --
18 only residents of this state can take advantage of this
19 program, or you have to live here now and have lived here the
20 last -- this is a little bit different because it is backward
21 looking in some sense. It literally is because you have to be
22 there for two years.

23 And then even assuming that it is a proxy for
24 Maryland residency, just saying that that's true, and I am not
25 finding that, but let's just accept that it is, I have never

1 seen a law that says you can apply, you can get the license,
2 you can get the benefit if you lived in the state 25 years
3 ago. And I am curious how that plays into the analysis. Does
4 it matter?

5 Let's say there was a law, there was a fourth prong
6 that said, and also, if you lived in Maryland for one year
7 prior to 1988, you can get a license. Would that violate the
8 Dormant Commerce law?

9 MS. NELSON: It would be very difficult to identify
10 the present day effect in interstate commerce if you were
11 creating such an open criteria.

12 THE COURT: Yes. Okay. May not have any rational
13 basis. There may be another problem with it, but it is an
14 interesting thing that has kind of been jumping out at me.

15 The Supreme Court has said explicitly that there is
16 an interstate market for marijuana, and as a former federal
17 public defender, I have some evidence of that. Certainly, not
18 my clients, but I watched other cases. So how can you come in
19 here and say that it is illegal, so let's just ignore that?

20 Because that is kind of, I don't want to say bugging me, but
21 it seems like you are trying to have your cake and eat it too.

22 MS. NELSON: Congress has steadfastly refused to
23 take legislative action on adult use cannabis in any form in
24 repeated sessions being asked to consider even the Safer
25 Banking Act, initially filed and introduced as the Safe

1 Banking Act, that would create limited protections for state-
2 licensed cannabis businesses to access more comprehensive
3 banking services from federally insured banks. They have not
4 been able to progress any legislation that would create any,
5 you know, recognition that there is a federally recognized
6 interstate cannabis market.

7 We simply aren't there yet. There are potential
8 actions coming. There are bills pending that are filed year
9 after year and don't move. So whereas here, the states have
10 been left to create their own programs ---- and regulate their
11 own programs independent of federal interaction and where
12 there are still very strict limits on safety and security
13 elements of regulating a cannabis industry and being able to
14 ensure that the industry's operating in a safe way, and that
15 no product can cross any state lines or cross the line onto
16 any federal property within the state.

17 THE COURT: Is that no products sold?

18 MS. NELSON: No regulated product is permitted to be
19 possessed on federal grounds. So --

20 THE COURT: That I get. What about the state line
21 part? Can't people come from other states and buy marijuana
22 in Maryland?

23 MS. NELSON: That is not legally protected activity
24 if they try to take it home to their state. And individuals
25 are warned of that. That is not -- the Maryland Cannabis

1 Program offers no protection if you take this across state
2 lines.

3 THE COURT: But it doesn't require you to show a
4 driver's license and show Maryland registry at purchase?

5 MS. NELSON: That is right.

6 THE COURT: Okay. So sort of the brown paper bag
7 approach.

8 MS. NELSON: Well, and people may be here for
9 vacation using it --

10 THE COURT: Sure.

11 MS. NELSON: -- within the state. You know, it is
12 difficult to -- you know, there are no residency requirements
13 in the Maryland program at any point.

14 THE COURT: So the State could say if you are out of
15 state, you pay a \$20 tax per sale. If you are from Maryland,
16 it is \$2. Well, let's do percentage. It is a 20 percent out-
17 of-state, 2 percent in-state.

18 MS. NELSON: And perhaps the State could, but they
19 wouldn't, and they haven't here created any hurdle that is any
20 higher for an out-of-state individual than a Maryland
21 resident. So in creating these statutes, the General Assembly
22 did take care to avoid any residency requirements or any
23 restrictions that would exclude others or disproportionately
24 negatively impact anyone.

25 And that is also a carryover from the medical

1 program where there was a careful recognition that many do
2 travel to Maryland for medical procedures, and many do need to
3 be here from out of state when they are receiving treatment at
4 one of the local medical institutions.

5 THE COURT: So earlier, I had made the comment that
6 if Congress does legalize marijuana, and I will hold my breath
7 on that, but if they did, isn't that going to invite like a
8 store of Dormant Commerce Clause problems? And is Maryland
9 trying to get out in front of that a little bit with it
10 because the scheme seems to be a little bit more measured here
11 and perhaps with a nod toward the future.

12 I don't expect you to understand everything about
13 the TRAP data laws, but you are Attorney General's Office. So
14 I figured I would ask. Is that what is going on here; an
15 effort to brace for the future?

16 MS. NELSON: I believe the General Assembly
17 attempted to approach this in the same way that they would any
18 other industry. That they attempted to create
19 constitutionally sound criteria that would be legally
20 defensible under the Commerce Clause.

21 I don't know that anyone anticipates a federal
22 marketplace anytime soon. And we aren't sure of the impact
23 of, you know -- or what changes may occur at the federal level
24 next. But the General Assembly did design an approach here
25 that would be legally defensible for any industry.

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1 THE COURT: So with respect to the Laches, I will
2 kind of close on that unless there is anything else you want
3 to draw my attention to. When, in your view, could the
4 Plaintiff have filed this lawsuit? And I think you said never
5 basically.

6 MS. NELSON: Plaintiff could have filed this lawsuit
7 on May 4th, 2023, when the law was passed. The criteria is in
8 statute. The Governor signed the law into effect on May 3rd.
9 If the challenge is to the statutory language, that could have
10 been filed on May 4th, before the State spent a single dollar
11 attempting to implement this ambitious statutory scheme.

12 It was very important to the General Assembly that
13 the regulator effectively and swiftly set up additional
14 regulated cannabis businesses. Where, in other states, there
15 has been significant delay between legalization and access to
16 regulated retailers, that only strengthens the legacy market,
17 and they have seen additional public safety concerns develop
18 in those other states. So that claim could have been brought
19 as soon as the law was passed.

20 I understand that Plaintiff has submitted an
21 affidavit indicating, first, that she is not sure when she
22 learned of the opportunity, but it may have been in September.
23 We know from public records that Plaintiff has been involved
24 in applying for cannabis business licenses since 2019. And we
25 know certainly that Counsel has actively participated in

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1 litigation very similar to this in many other states for the
2 past few years.

3 So if she learned in September, which is the best
4 information provided in the affidavit, they could have brought
5 a challenge then. The State, at that point, had not spent
6 money to conduct all of their outreach and education, and
7 technical assistance programs. They had not spent money on
8 the social equity applicant verification process. They had
9 not spent money on the application portal. They had not spent
10 money on the application review process.

11 And no other applicants had paid application fees to
12 the State. So here, Plaintiff does not recall when she
13 learned of this program, but the affidavit supposes it may
14 have been in September. Plaintiff submitted a request for
15 social equity applicant verification and received a notice on
16 November 10th that there was a preliminary adverse
17 determination, and unless she provided more information, the
18 vendor was not able to verify her social equity applicant
19 status.

20 There was no further attempt at communication by the
21 Plaintiff with the vendor. And so Plaintiff knew on November
22 10th, at the very latest, that she was not going to be
23 qualified as a social equity applicant. November 10th was
24 before the application portal opened and before any other
25 applicants for a cannabis business license paid their

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1 application fees.

2 THE COURT: Well, what about the argument that they
3 tried, you know, to handle this out of court and that that
4 shouldn't be counted against him. Or her. Counsel is him.
5 So --

6 MS. NELSON: There are interesting public records
7 available on that approach in other cases as well. And
8 whereas here, Plaintiff waits until the eve of the lottery,
9 after the State has invested significant resources in the
10 process and after the State has engaged over 1,700 applicants
11 in the process, and then Plaintiff seeks to enjoin the entire
12 scheme, not just the criteria that they contend they are
13 grieved by.

14 I don't know that they should be given any grace for
15 making a settlement demand that, you know --

16 THE COURT: Well, you don't have to go into what it
17 was or anything like that, but -- all right. Two more
18 questions, if I can, and then I will give the Plaintiff the
19 last word. But there was a back and forth over the relief
20 sought or not necessarily the relief sought, but the relief
21 that might be granted, and it is now turning to striking the
22 entire process as opposed to the third prong. And maybe it
23 was that all along. I don't mean to imply that it just
24 changed. What is your view on that?

25 MS. NELSON: The relief they advocate is overly

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1 broad. It has absolutely nothing to do with their injury.
2 Plaintiff states, without any support, that she would not have
3 qualified under the first two eligibility criteria, and I
4 think, you know, we do have case law, precedent in the Fourth
5 Circuit that an injunction should be tailored to restrain no
6 more than what is reasonably required to accomplish its ends.
7 If the constitutional injury is in one of the three alternate
8 criteria, then that is the most that should be enjoined in
9 this case.

10 It is a overly broad request, and it is not clear
11 what is behind --

12 THE COURT: So with respect to the -- final
13 question. This question of a stay has risen here. If you
14 win, he will appeal and seek a stay. If he wins, I assume
15 maybe the same, although it would have been joined. Maybe the
16 selection or maybe we have got to talk about that as a
17 separate issue. But what is your view on that; on the stay to
18 let this go up or down to Richmond?

19 MS. NELSON: I think a stay is -- Plaintiff would
20 consider that a win, and the damage to the State and all
21 current applicants would be just as significant as if they had
22 met their burden on any of the criteria required for
23 demonstrating that they are entitled to a temporary
24 restraining order.

25 There have been very blunt references in other cases

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1 about tactics and whether timing is carefully designed to
2 exert maximum pressure on the state. Here, Maryland created a
3 licensing process where no one has a guarantee to a license.
4 That is the lottery. Everyone can qualify for entry into the
5 lottery, but nobody is guaranteed a license in the lottery.

6 THE COURT: Does it say how many licenses are given
7 out?

8 MS. NELSON: There are statute limits. The State
9 will not give away all licenses in this first licensing round,
10 but it does specify. This round, the State intends to award
11 up to 179 licenses and to conduct individual licenses for each
12 license category in each region. So --

13 THE COURT: Okay. Continue.

14 MS. NELSON: -- many aspiring small business owners
15 who have already made their initial investment in putting
16 together a business plan and an operational plan and pursuing
17 opportunities for funding and pursuing opportunities for
18 locations would be in limbo pending further judicial action.
19 And the harm to the State would be the same.

20 THE COURT: Yes. It would essentially give to the
21 same outcome even --

22 MS. NELSON: It would.

23 THE COURT: -- in losing as you would in winning, I
24 guess.

25 MS. NELSON: It would, Your Honor.

1 THE COURT: Well, if we get to that, I would
2 probably ask for a little bit more briefing on that question,
3 but that is maybe down the road.

4 Thank you very much. Unless there is anything else,
5 I am going to give him the last word, and then we will all be
6 on our way.

7 MS. NELSON: Thank you.

8 MR. JENSEN: Thank you, Your Honor. I would like to
9 begin with Laches. The State continues to speak out of both
10 sides of their mouth on this. They say that we should have
11 challenged it back in May when the program was put out, but
12 they say that we have no standing even today even though we
13 applied in November and were not permitted to go onto the next
14 round. So if the State is saying that we don't have standing
15 even today because we didn't submit a registration that we
16 were not permitted to submit, how could we possibly challenge
17 the law in May?

18 And I want to also point out, Your Honor, you know,
19 where in California, we don't file every jurisdiction and that
20 is reasonable. We find out about these things when an
21 industry newsletter or something similar says an application
22 program has opened. So we were transparent with the Court. I
23 don't know exactly when, but my experience is that there would
24 have been a newsletter that says Maryland is open, and that is
25 what would have first alerted to us. And so our best guess is

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1 that probably would have happened in September, but it
2 certainly would not have happened in May.

3 THE COURT: And I guess their view is you are a
4 little bit different than the average plaintiff in that it is
5 clear you are very active in this world, and perhaps, the
6 insinuation is you should know, but May, June, July, August,
7 September. I don't know. I think the issue is more about --
8 in my mind, it is what did you do in September, not so much
9 what did you do in May.

10 MR. JENSEN: Well, that is fair, Your Honor, but in
11 September, I would, you know, point out that, you know,
12 however many months that is, pretty short for a litigation. I
13 would also point out again that they are saying that we don't
14 have standing.

15 THE COURT: Fair enough.

16 MR. JENSEN: So they complain that we haven't proven
17 that we could have submitted a complete application because we
18 didn't submit an operation diversity plan. So, you know, we
19 have alleged we have could, which is all that I think is
20 required at this point. I would like to point also that we
21 had no ability to submit that. They didn't give us the
22 registration link to submit it.

23 And they are also pointing out -- I mean, they are
24 arguing that these diversity plans and the operational plans
25 is oh, there is something difficult. They are not. They are

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1 things that people submit along with applications. The
2 Defense has said that there are --

3 THE COURT: Plus, I guess your sophistication as an
4 entity involved in this business might be helpful on this
5 point.

6 MR. JENSEN: Well, Your Honor, I can do you one
7 better. They have said that the public record shows that
8 Justyna was involved in applications going back to 2019. The
9 public record will show that she submitted diversity plans and
10 operation plans in those programs --

11 THE COURT: That makes sense to me.

12 MR. JENSEN: -- in 2019.

13 THE COURT: In that sense, it is a benefit. Maybe
14 not so much in Laches, but at least in this question of ready
15 and able.

16 MR. JENSEN: Right.

17 THE COURT: I have got you.

18 MR. JENSEN: Right. I am not sure how important
19 this point is, but the Defense said that this is different
20 because it is an individual applying, not a company. In Lowe
21 it was an individual, not a company. That is in Detroit. And
22 many of them -- also in the Sacramento, there were both. It
23 was the company and the individual.

24 THE COURT: It is great when we talk about this
25 individual versus company, wouldn't there be a stronger

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1 argument from out-of-state schools that this is a Dormant
2 Commerce Clause violation. Like, for example, if Cal State
3 Long Beach, which I think is the school that you presented; is
4 that right?

5 MR. JENSEN: Yes.

6 THE COURT: Good baseball, right?

7 MR. JENSEN: I can't say I follow that, Your Honor.
8 Sorry.

9 THE COURT: Either way. Wouldn't they have a better
10 argument?

11 MR. JENSEN: I don't think they have any argument at
12 all. They are not going to receive a license, ----.

13 THE COURT: Okay. Is that what it is? Because they
14 wouldn't be in the market? Their graduates are disadvantaged.
15 I don't know how attenuating this can get.

16 MR. JENSEN: I don't see how you have third party
17 standing there.

18 THE COURT: Okay.

19 MR. JENSEN: If you are an association, you can have
20 --

21 THE COURT: Yes.

22 MR. JENSEN: -- third party. If you are a union --
23 what we have to remember is I don't see a college.

24 THE COURT: College on behalf of his alumni or
25 something like that.

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1 MR. JENSEN: They are not even students, right?

2 THE COURT: Yes.

3 MR. JENSEN: Because they have to be two years.

4 THE COURT: That is true. They are not even alums.

5 They just have to be present. So anyway, that is an aside,
6 and fortunately, not in front of us. But if it was, you are
7 all over it.

8 MR. JENSEN: The Defendants also said that Justyna
9 should have registered in the portal because you could do it
10 before, I guess, you were -- why would she do that? I would
11 like to know how many people do that. How many people started
12 a portal before the registration period began? Because it
13 wasn't like a 24-hour period. You had time.

14 Not even as a matter whether she was rejected, I
15 would be curious to know how many people went in and started
16 setting up profiles for application programs that aren't even
17 open. I don't know why you would do that.

18 THE COURT: Doesn't that data that the State
19 provided on the actual number of applicants for the third
20 prong -- using the third prong as the qualification for social
21 equity verification certification, does that help you? Hurt
22 you?

23 MR. JENSEN: Does not make the slightest bit of
24 difference. They can't say I have these constitutional things
25 over here, so ignore my unconstitutional thing over here.

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1 They have an unconstitutional program. How many people were
2 or were not allowed into it doesn't change ----.

3 THE COURT: But what is only unconstitutional -- in
4 that regard, it is base. If I am at tier two and I looking at
5 balancing things or I am trying to determine if it is just a
6 de minimis effect, is that de minimis?

7 MR. JENSEN: Because, Your Honor, there is a case
8 from the Fourth Circuit that said you don't just get a harm
9 report. You look at the harm of interstate commerce. How
10 many people from other states didn't apply? How many people
11 didn't go into it?

12 You know, the Defense said that it is reasonable to
13 think that the Maryland people are most interested in Maryland
14 licenses. Okay. But there are operators all over this
15 country that are trying to gather as many licenses in as many
16 jurisdictions as they can. That is why I am here.

17 THE COURT: No, I know one.

18 MR. JENSEN: Well, true. But New York was very
19 transparent that they set up their program to keep multi-state
20 applicants out. The whole purpose of that is to block out-of-
21 staters, and if they didn't mean to do that, they wouldn't
22 have had to put the in-state limitation.

23 THE COURT: Okay.

24 MR. JENSEN: I have several more points.

25 THE COURT: Yes. Go for it. Go ahead.

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1 MR. JENSEN: Some of my notes are not clear, even to
2 me.

3 THE COURT: I am looking at my own and take your
4 time.

5 MR. JENSEN: The tier two Pike analysis, I believe
6 the Court asked do we need to wait and see how many people got
7 licenses. No, the tier two Pike analysis, you don't have to
8 get the outcome. The issue is the law. What burden is the
9 law putting on people who want to apply? So the way for the
10 licenses to be issues has two prongs. Right. One is it is
11 after the fact. So now, the Court has to decide as a matter
12 of equity if you are going to recall those licenses.

13 And second, I don't think that is the answer. I
14 think the answer is what harm does the law pose, what burden
15 does it pose on out-of-state applicants. And here, if you
16 went to college in 49 of the 50 states, you are not eligible.

17 The State, I believe, has somewhat changed the
18 justification here in court. In their papers, they said the
19 justification is to provide students who went to schools that
20 receive -- whether students received government benefits. In
21 court, they have said that the purpose is to support the
22 schools. I reject that for a number of reasons.

23 You know, again, as Your Honor pointed out, you can
24 support schools that do that nationwide. I also point out
25 this is not about the schools. The schools are not getting

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1 licenses. The individuals or companies affiliated with those
2 individuals get licenses. So you are not supporting the
3 school by giving out licenses to these people. And even if it
4 was, it is a one-time or maybe two-time lottery. This is not
5 a go-forward benefit where people are more likely to attend
6 those schools because of that.

7 THE COURT: What about that question I have about
8 backward looking analysis here? That this is a little
9 different than all those other statutes because it is sort of
10 --

11 MR. JENSEN: So in --

12 THE COURT: No, go ahead. You know the question.

13 MR. JENSEN: In every jurisdiction except one that I
14 am aware of, and I don't progress to know every jurisdiction,
15 but their conviction has a time limit, and it is usually some
16 time before the law. So you have to have a conviction before
17 the State made it legal. And I think in some of them, and
18 again, I am doing this a long time in my head, so I don't want
19 to be wrong, but I believe in Sacramento it was like back to
20 2011 or something like that, even though the program was in
21 probably 2021. So they have quite a bit advance cut-off on --
22 now, I'm thinking it might have been Washington that had such
23 a long cut-off.

24 THE COURT: But then like, for example, that L.A.
25 case had --

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1 MR. JENSEN: Yes.

2 THE COURT: In the court, they find that that was
3 actually okay; that part of the statute? The part that said
4 you can have no prior conviction because it was essentially --
5 the criminal justice process was open to all?

6 MR. JENSEN: Yes. I mean, there was a previous case
7 in Los Angeles called Arma One*, which was settled on equal
8 protection grounds. It never got there, but the judge at that
9 time in the tentative order put that same thing about well,
10 you could come on vacation and get arrested.

11 And so then we had an oral argument on that. The
12 lawyer pointed out, you know, is that said by Dormant Commerce
13 Clause, that if people happen to come to your place on
14 vacation and happen to get arrested, that is not a -- so the
15 judge took that out.

16 This judge put that in in Los Angeles. I point out
17 again, that wasn't appealed because it was impliedly appealed
18 because the ultimate conclusion of that was that we are going
19 to stay the case until the pending appeal in the Peridot Tree
20 that Your Honor watched. So that is on appeal. That is the
21 best I can say about that, and I would ask the Court to use
22 its own judgment, whether that makes sense that if somebody
23 travels in from out-of-state and happens to be arrested,
24 whether that really makes sense under the Dormant Commerce
25 Laws.

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1 THE COURT: Yes. I only focus on it because it
2 seems to be the closet analogy to this. And admittedly, sort
3 of crude one, but --

4 MR. JENSEN: Well, in Sacramento, you had to be a
5 current or former resident of Sacramento going back from like
6 I think the 1980s until something like 2011 or something. I
7 forget the exact date. But that was, again, a prior
8 residence.

9 And the vast majority of these are residents within
10 a window. Certain places like Washington State has a six-
11 month residence before, but Los Angeles does not. It was you
12 had to be, I believe, 5 out of the previous 10 years or --

13 THE COURT: Okay.

14 MR. JENSEN: -- 10 years out of your whole life,
15 something like that. And that is generally the requirement.
16 Again, with the exception of Washington, I believe most of
17 them have the requirement to be in state at some point.

18 Again, I will point out, you know, the Defendants,
19 again, argue that the Court shouldn't enjoin the whole
20 program. It should only enjoin the third tier. The
21 Defendants say on page 11, I believe, of their opposition, the
22 Court can essentially line item detail, which is, I believe,
23 correct. I did not ask this Court to strike only the third,
24 you know, that to be transparent.

25 THE COURT: I thought they were referring more to

1 the fact that you were asking for me to take out the state
2 part, which is what I --

3 MR. JENSEN: No. I was using it --

4 THE COURT: -- was reading this as.

5 MR. JENSEN: -- a hypo that -- I was saying if that
6 happened, and I never asked the Court to do that. What I said
7 is if the Court enjoins the program, the legislation has the
8 chance then to put in a constitutional program as other states
9 have done. And in this case, it could be as simple as taking
10 out the words in the state.

11 Again, I think that is the -- I am not aware of any
12 jurisdiction that approached it from the standpoint of let's
13 strike just the offending portion. All of them, they either
14 enjoin them or they don't, but nobody has ----.

15 THE COURT: Yes. But go back to what I said at the
16 beginning when I was making noises to make the point, which I
17 thought all of the statutes, it is sort of you had to take out
18 the whole thing because it was separate dependent clauses if
19 you will. You had to have this and this and this, so it
20 wouldn't survive if you chopped off one part of this.
21 Whereas, this one seems different.

22 MR. JENSEN: Well, I am trying to remember back to
23 one particular program, but I won't burden the Court's time
24 with that. I don't think it makes a difference because I
25 think if part of the law is unconstitutional, it is

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1 unconstitutional. You don't get to save an unconstitutional
2 law by having two other constitution programs that, by the
3 way, don't even apply to the person who is challenging the
4 law.

5 THE COURT: Yes. But that is the part I get. And
6 this goes back, it is not necessarily standing to me, but it
7 does go back to just the remedy, which is if the State did
8 say, okay. You know what? We are just going forward with one
9 and two. Your client doesn't get the license.

10 MR. JENSEN: Your Honor, that brings up somewhat --
11 the State is -- by the way, the State quoted a Defendant
12 briefing here. This wasn't a statement of the Court. This is
13 a Defendant brief saying that we were somehow acting proper by
14 waiting until the application program.

15 You know, it has gone the other way, right, inn
16 Missouri. They challenged before an application in Detroit.
17 And the result of that was the states lost the entire program.
18 Or I guess in Detroit, it was a city. In Missouri, they lost
19 the entire -- so, you know. This one, if they say only one
20 person has standing, they can solve this right now. So I
21 think for them to criticize me for not bringing it earlier,
22 they would have lost the entire program. Here, they can move
23 this right now if they wanted to.

24 THE COURT: By giving your client a license?

25 MR. JENSEN: Exactly. So I don't think that we are

1 acting improperly or placing a larger burden on them because
2 they would lose the entire program. They would have no choice
3 in that matter because I brought this --

4 THE COURT: What I should have said, by giving your
5 client the right to enter the lottery?

6 MR. JENSEN: However you want to say it.

7 THE COURT: Well, it is your negotiation.

8 MR. JENSEN: Right. But, Your Honor, the point is
9 Missouri and Detroit, they had no ability to save their
10 programs because once somebody challenged on the front-end,
11 anybody could do that afterward. Even if they tried to settle
12 with that plaintiff, it does nothing for them.

13 THE COURT: I guess their point is just if you had
14 brought this earlier, we would have been having this --

15 MR. JENSEN: If I brought this --

16 THE COURT: -- way back before they spent a nickel
17 other than on --

18 MR. JENSEN: If I had brought this earlier, they
19 would have lost the entire program.

20 THE COURT: Maybe, but they wouldn't have spent
21 \$650,000, and that is just the dollar cost on, you know, their
22 end. I don't even know what the cost to the people who did
23 submit applications would be. They obviously had to go
24 through something in order to put together the application,
25 and now, we know there are some 1,900 individuals at least.

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1 MR. JENSEN: But this --

2 THE COURT: So there is a lot of -- there is
3 additional costs in excess of 650,000, at least as far as I
4 see because that is just the State's cost. Am I right?

5 MR. JENSEN: If this were a racial challenge, do you
6 think they would say that because they spent \$650,000, they
7 can exclude a certain race?

8 THE COURT: Well, it is not a race challenge, so we
9 don't even need to get into that.

10 MR. JENSEN: Well --

11 THE COURT: But my point -- yes. I mean, putting
12 the -- I am not going to weigh which parts of the constitution
13 are more important. I see your point though.

14 MR. JENSEN: Right. And as far as the other costs,
15 I mean, there is a \$5,000 writer application fee. It was paid
16 to the Defendants. They can return that.

17 THE COURT: Yes. I mean, I see your point is that
18 the -- I think, is the violation of the constitution is
19 priceless. Like, we can't say, okay, it only costs this much
20 or it costs this much. But I think taking -- in every
21 argument where Latches is raised, there's probably a
22 significant violation or at least a perceived violation.

23 The point as I see it is just, we are now literally
24 a week or two away from the rollout of the lottery, which has
25 cost a significant amount of money to the State, and I would

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1 say to all the applicants. And that ignores sort of the sweat
2 equity part of it.

3 MR. JENSEN: Your Honor --

4 THE COURT: If this could have been brought back
5 when you first learned about it, and I get it. You are saying
6 the State is talking out of both sides. I totally understand
7 your argument. I am just saying let's put that aside. If you
8 could have brought it back then, it would have saved a lot of
9 this. And that is what I think is the State's overarching
10 point. And I will look at them and see if I am ignoring --
11 okay. They are nodding.

12 MR. JENSEN: Your Honor, we brought this action --
13 this is in the reply, and I am trying to find it, but we --

14 THE COURT: You know, I understand when it was
15 brought, and that is all part of the record. I can go back to
16 the briefs and do it. But I think what is clear is that by
17 your own affidavit, your client was aware and should have been
18 aware that they were excluded in September.

19 And I get it that the State hadn't maybe printed a
20 list of the six qualified schools, but I don't know that the
21 list was necessarily needed. Even agreeing that you don't
22 have to jump through all the hopes that the State is saying, I
23 still see an issue with waiting. And I credit the settlement
24 negotiation piece, and it is not necessarily a punishment for
25 that, but it is a delay.

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1 MR. JENSEN: Your Honor, I am --

2 THE COURT: Not the worst.

3 MR. JENSEN: -- trying to find this in the brief,
4 and I believe it is on page 12 that it talks about it. But we
5 filed this lawsuit before the State -- so we filed the lawsuit
6 on I believe the 26th, and they knew it was coming before
7 then. They knew it was coming since -- I am sorry. The 26th
8 of January. They knew it was coming since December.

9 THE COURT: But it doesn't really matter if they
10 knew when it was coming. Right. I mean, doesn't --

11 MR. JENSEN: But, Your Honor, on February 9th is
12 when they notified applicants that they were eligible or
13 ineligible to apply for the lottery. So --

14 THE COURT: But then aren't -- I mean, in some
15 sense, using your phrase, are you talking out of both sides of
16 your mouth when it comes to that? Because you knew you were
17 ineligible in September. I am not hearing anything or reading
18 anything in the pleadings that reflects that there was ever a
19 debate over whether your client would qualify or not. It was
20 obvious she wouldn't.

21 And so you could have filed back then, said all the
22 things you said here. I have an established participant in
23 the marijuana market. She understands the system. She is
24 licensed in these places. She is ready and able. Here is my
25 declaration, but she can't because she doesn't qualify as a

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1 social equity applicant under this section. Court, please
2 figure it out for me. We could have done that back in
3 September. I think that is my point.

4 MR. JENSEN: So assuming that we found out in
5 December, which I think is reasonable.

6 THE COURT: I would say September. I thought
7 September was --

8 MR. JENSEN: Yes. I mean, I --

9 THE COURT: You said December.

10 MR. JENSEN: Well, no. It had to be before December
11 because we applied in November. You know, I did not want to
12 be under -- I didn't want to say we found out November
13 because, you know, I don't know. So I am going to assume it
14 is -- September is a reasonable time because that is when it
15 opens. That is probably when we had the paper. So I am going
16 to assume it is September.

17 All right. If that is the fact, you know, all of
18 the --

19 THE COURT: Well, let's just stick to your affidavit
20 because that is the --

21 MR. JENSEN: Right. So the affidavit said -- I
22 don't remember exactly when, so I am going to say September is
23 likely because that is when the program opened, I believe.

24 THE COURT: Okay. I can find it in here.

25 MR. JENSEN: Your Honor, my point on that is if I

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1 were to make a number that advantaged me, it would not be
2 September. I would say November. So if anything, it would be
3 an over inclusive in that.

4 THE COURT: Well, I mean, it is the truth. I don't
5 think you are over inclusive or under. Whatever it is is what
6 is in the affidavit. I am going to assume that is the truth.

7 MR. JENSEN: Right. And the truth, as we put in the
8 affidavit, is to the best of our memory, it would have come in
9 through reading a newsletter that it opened. So that is the
10 one who started all this.

11 THE COURT: Okay.

12 MR. JENSEN: So okay. So let's take September. You
13 know, every one we have done, we have applied and gotten a
14 rejection for standing, to moot the standing issue.
15 Notwithstanding that that happened here. I am still facing a
16 standing issue because they're arguing otherwise. So I don't
17 think September was the right time for us to apply. I think
18 the right time was after we were rejected, and that is what we
19 did.

20 THE COURT: And you were rejected in?

21 MR. JENSEN: December 13th.

22 THE COURT: And you filed?

23 MR. JENSEN: Well, December 13, I was rejected.
24 December 27th, I contacted them about a settlement. In
25 January, I believe, 26th, is when we filed.

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1 THE COURT: And I know that seems like reasonable
2 timeframes under the normal world of litigation. I mean, I
3 might even say they are quick, but given that it was
4 advertised, I thought that the licenses were going to be
5 distributed in February. It seemed to require a bit of a
6 quicker pace.

7 MR. JENSEN: They have not held the lottery yet. To
8 my knowledge --

9 THE COURT: Well, I know they haven't.

10 MR. JENSEN: -- they have months.

11 THE COURT: But I think when you applied, and maybe
12 I am making facts up now, but I thought when you applied,
13 there was some knowledge of when the lottery would take place.

14 MR. JENSEN: Your Honor, I think that all of this is
15 fair game. If they are going to point to my knowledge, I
16 think it is fair to point to their knowledge that they have
17 not even -- as far as I know, they have not even announced the
18 date of the lottery yet. They certainly know there are
19 challenges here, so I think that is fair game.

20 THE COURT: All right. Fair enough. Well, thank
21 you both. I really appreciate the time and effort. My plan
22 is to try and get something out like early next week. This
23 issue of whether there needs to be a stay or not, I would
24 probably invite a little bit further discussion on that, just
25 in paper if necessary. So we will address that whenever I put

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1 something out. My hope is to get it out by early next week,
2 but I appreciate the time and effort everybody took to put
3 this together and the arguments today. Thanks a lot.

4 THE CLERK: All rise. This Honorable Court now
5 stays adjourned.

6 (Whereupon, at 11:32 a.m., the hearing concluded.)

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C E R T I F I C A T E

I hereby certify that the foregoing is a correct transcript from the duplicated electronic sound recording of the proceedings in the above-entitled matter.

/s/ Jana Jordan 4/17/2024
Jana Jordan Date
Transcriber, CompuScribe